

STATE OF MICHIGAN
COURT OF APPEALS

AMERICAN COMPENSATION INSURANCE
COMPANY,

UNPUBLISHED
October 19, 2006

Plaintiff/Counter-Defendant-
Appellee,

v

No. 270075
Genesee Circuit Court
LC No. 04-078098-NF

TITAN INSURANCE COMPANY,

Defendant/Counter-Plaintiff-
Appellant,

and

CNA INSURANCE COMPANY, DENISE
LATANYA-JEANETTE BARBEE, and
CONTINENTAL CASUALTY COMPANY,

Defendants.

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Defendant Titan Insurance Company (hereafter “defendant”) appeals as of right from a judgment entered in plaintiff’s favor after the trial court granted plaintiff’s motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff is the worker’s compensation insurance carrier for the employer of defendant Barbee and Beonca McConnell. While engaged in company business, Barbee, who was driving a company vehicle, struck and severely injured McConnell. Plaintiff initially paid worker’s compensation benefits to McConnell but later terminated them, determining that McConnell was not entitled to such benefits. It filed this action, asserting that it was entitled to reimbursement for payments made from defendant, McConnell’s no-fault insurance carrier. Thereafter, a worker’s compensation magistrate determined that McConnell was not entitled to worker’s compensation benefits because her injuries did not arise out of her employment. Despite the magistrate’s decision, defendant maintained that plaintiff was in fact liable for worker’s

compensation benefits. The trial court determined that it did not have authority to redetermine that issue and thus granted judgment in plaintiff's favor.

We review the trial court's ruling on a motion for summary disposition de novo on appeal. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

The Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.* provides that "[a]n employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act." MCL 418.301(1). "Any dispute or controversy concerning compensation or other benefits shall be submitted to the bureau and all questions arising under this act shall be determined by the bureau or a worker's compensation magistrate, as applicable." MCL 418.841(1). "Issues concerning injuries and whether they arose out of and in the course of employment must be initially submitted to the Bureau of Workers' Disability Compensation." *Schwartz v Golden*, 126 Mich App 790, 793-794; 338 NW2d 218 (1983). "Exclusive jurisdiction lies with the bureau even though [a] plaintiff's complaint does not allege or rely on an employment relationship between the parties." *Johnson v Arby's, Inc*, 116 Mich App 425, 431; 323 NW2d 427 (1982). "Only cases which are based on a different relationship between the parties and in which it is clear that the employer-employee relationship between the parties is unrelated to the cause of action may be commenced in circuit court without an initial determination by the bureau." *Jones v Gen Motors Corp*, 136 Mich App 251, 254-255; 355 NW2d 646 (1984). In other words, the "circuit court has jurisdiction to determine rights arising out of an entirely different relationship and in an entirely different type of proceeding in which the employer-employee relationship is only incidentally involved." *Michigan Prop & Cas Guaranty Ass'n v Checker Cab Co*, 138 Mich App 180, 183; 360 NW2d 168 (1984). Regardless of the label placed on a claim, however, if the injured person's status as an employee is undisputed and the only question to be decided is "whether at the time of the injury he was in the course of his employment," the issue must initially be decided by the worker's compensation bureau. *Netherlands Ins Co v Bringman*, 153 Mich App 234, 239-240; 395 NW2d 49 (1986).

While plaintiff's complaint tacitly sought a determination whether McConnell's injury arose out of and in the course of her employment, that issue was properly referred to the worker's compensation bureau for determination. The only issue left to be decided in this case was which party was liable for McConnell's expenses if plaintiff was not. It appears undisputed that if plaintiff is not liable for payment of worker's compensation benefits, then defendant is liable as McConnell's no-fault insurer. Defendant's only defense, that plaintiff is responsible for payment of worker's compensation benefits (which may then be set off against no-fault benefits to be paid by defendant, MCL 500.3109), because McConnell's injuries arose out of and in the course of her employment, is an issue to be decided by the worker's compensation bureau. The circuit court does not have authority to decide that issue.

Defendant's reliance on *State Farm Mut Automobile Ins Co v Roe (On Rehearing)*, 226 Mich App 258; 573 NW2d 628 (1997), is misplaced. In that case, the only issue was the interpretation of the plaintiff's insurance policy, which excluded coverage for any injury to an insured's employee "arising out of his or her employment." *Id.* at 261-262. The Court agreed that the exclusion in the insurance policy should be construed in a manner consistent with § 301 of the WDCA. *Id.* at 263-265. But it also held that in interpreting the policy exclusion, the court is not bound by a worker's compensation magistrate's "finding that [the employee's] injuries did

not arise out of and in the course of his employment” *Id.* at 270. In this case, neither party seeks interpretation of an insurance policy exclusion. Rather, defendant seeks a determination whether McConnell was entitled to worker’s compensation benefits under § 301 itself. As discussed previously, that was an issue to be decided by the worker’s compensation bureau.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens